

2005 UN Commission on Human Rights: The UN's chief guardian of human rights?

Executive Summary

Introduction

Reform of the Commission

Amnesty International (AI) welcomes the report of the High-level Panel on Threats, Challenges and Change, and in particular its recommendations for reform of the UN's human rights institutions. AI agrees that there is a strong case for reform of the Commission on Human Rights (the Commission), to give it a stronger and more authoritative position that corresponds with the primacy which the UN Charter accords to encouraging respect for human rights as a purpose of the UN. Reform must address the longstanding problems faced by the Commission, notably that its members routinely resort to double standards in addressing country situations and that membership is too often used to shield the Commission members from human rights scrutiny instead of to protect and promote human rights. AI firmly believes that membership of the UN's chief human rights body attracts distinct responsibilities to strengthen domestic and global respect for human rights standards. Each member of the Commission is accountable for fulfilling these responsibilities.

The reform must also aim to create a more effective UN human rights body capable of addressing protection and promotion of human rights in all countries at all times and capable of responding effectively to crisis situations. AI encourages each member of the Commission to bear in mind the findings of the High-level Panel as it prepares for the 61st session of the Commission:

- “The Commission on Human Rights is entrusted with promoting respect for human rights globally, fostering international cooperation in human rights, responding to violations in specific countries and assisting countries in building their human rights capacity.”¹
- “In recent years, the Commission's capacity to perform these tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by states that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”²

Responsibility for the Commission begins with each member. Each member that calls on the Commission to address some human rights situations, but turns a blind eye to others; each member that

¹ "A more secure world: Our shared responsibility: Report of the High-level Panel on Threats, Challenges and Change", (A/59/565), para. 282.

² *Ibid.*, para. 283.

supports or abstains in “no-action motions”; each member that fails to cooperate with the Special Procedures of the Commission contributes to undermining the credibility and professionalism of the Commission. Observer states that are active at the Commission must also bear their share of responsibility for the current situation of the Commission. AI calls on each member and each observer state to make its own demonstrable commitment to re-establishing the credibility and professionalism of the Commission at its 61st session.

Issues before the 61st session of the Commission

In its external document, *2005 UN Commission on Human Rights: The UN’s chief guardian of human rights?*,³ AI makes a number of recommendations in respect of some of the issues on the Commission’s agenda, including in relation to reaffirming the absolute prohibition of torture, abolishing the death penalty, limiting the negative impact of counter-terrorism measures on human rights, ending violence against women, and controlling the impact on human rights of business corporations. AI is also calling on states to facilitate and support current efforts to develop new standards, including the draft Declaration on the Rights of Indigenous Peoples, the draft legally-binding instrument for the protection of all persons from enforced disappearance, an optional protocol to the International Covenant on Economic, Social and Cultural Rights, and the draft Basic Principles and Guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.

With regard to human rights violations in specific countries, AI is this year focusing on achieving strong measures by the Commission to promote and protect human rights in the following six countries: Colombia, Democratic Republic of the Congo, Israel and the Occupied Territories, Nepal, Sudan and Turkmenistan. AI’s concern about national human rights situations, however, extends far beyond these six countries as the organization’s annual report and other publications amply demonstrate. In particular, AI regrets the Commission’s silence and lack of action with regard to the grave human rights situation in Chechnya, Guantánamo Bay, Indonesia, Iraq and Zimbabwe, and calls on all member states to explore options to contribute to ensuring respect for human rights in those countries, among others.

Absolute prohibition of torture

The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment has underpinned all relevant international human rights instruments elaborated since the Universal Declaration on Human Rights. Yet AI continues to document cases of torture and ill-treatment in all regions of the world, including in more than half of the states which are currently members of the 61st session of the Commission.⁴

In 2003, a Chechen woman who worked for a humanitarian organization in the North Caucasus in the Russian Federation, was allegedly tortured, raped, and beaten while held in a detention centre. In Zimbabwe, Tonderai Machiridza, a member of the Movement for Democratic Change, died in April 2004

³ AI Index: IOR 41/001/2005, 1 January 2005.

⁴ In its *Annual Report 2004*, Amnesty International recorded allegations of torture and ill-treatment in 132 states – two-thirds of the member states of the United Nations. *Statistics covering January to December 2003* (AI Index: POL 10/015/2004).

after being hit with truncheons by police officers. In the Nanggroe Aceh Darussalam region of Indonesia, the military and police routinely inflict torture and ill-treatment on prisoners, including rape and other forms of sexual violence on female detainees.

Erosion of standards

The “war on terror” has been a challenge to the framework of international law, as governments have trampled human rights and fundamental freedoms in the name of countering terrorism. The United States government has been widely criticized by human rights experts and organizations for trying to legitimize some interrogation methods amounting to torture and other cruel, inhuman or degrading treatment. The justification for doing so emerged after images from Abu Ghraib prison in Iraq showing a hooded detainee with wires dangling from his hands, a naked man cowering in terror as soldiers threaten him with snarling dogs, and other detainees forced into sexually humiliating poses were broadcast around the world.

Strengthening the international framework

The Commission has been the architect of several international standards to combat torture, including the Convention against Torture and its Optional Protocol. To date, only a few states have ratified the Optional Protocol, which requires 20 ratifications to enter into force.

The 61st session of the Commission will coincide with the 20th anniversary of the establishment of the Special Rapporteur on torture. Despite its pivotal role, this mandate is often subjected to attempts by governments to undermine its work. Some states fail to respond positively to his requests for information or to undertake a visit. Since 1988, the Special Rapporteur on torture has visited 27 countries and elaborated detailed recommendations for their governments. The Commission has an opportunity to engage actively in reviewing implementation of these recommendations by governments on the basis of the Special Rapporteur’s reports and taking action accordingly, including the provision of technical assistance.

Abolition of the death penalty

The Commission’s annual resolutions on death penalty reflect the views of member states on how to achieve the agreed UN goal of abolition of the death penalty. The UN Secretary-General’s quinquennial report on capital punishment, which will be submitted to the 61st session, will serve as an important source of information on this issue.

AI’s information indicates continuing progress towards worldwide abolition. In 2004, Bhutan, Samoa, Senegal and Turkey abolished death penalty for all crimes and Tajikistan established a moratorium on the death penalty. By the end of 2004, 83 countries had abolished the death penalty for all crimes, 13 had abolished it for ordinary crimes only, and 22 were abolitionist in practice. AI remains deeply concerned about the use of death penalty against child offenders – people convicted of crimes committed when they were under 18 years old. Such use is contrary to Commission resolution 2004/67 as well as Commission resolutions 2004/43 (Human rights in the administration of justice, in particular juvenile justice) and 2004/48 (Rights of the child). In 2004, AI recorded three executions of child offenders in Iran and one in China.

Human rights and counter-terrorism

Over the past year, AI has continued to note a negative impact on human rights by legislation and measures introduced by states to counter terrorism in a range of countries.⁵ AI condemns, in the strongest terms, terrorist attacks, whoever the perpetrator and whatever the motive, but urges governments to ensure that any measure taken to prevent or respond to such attacks fully conform with their obligations under international law, in particular international human rights, refugee and humanitarian law.

Under the banner of fighting the “war on terror”, the United States government has blatantly disregarded human rights and fundamental freedoms. Images of torture and ill-treatment on detainees in US custody in Iraq and other locations dramatically illustrated how human rights can be sacrificed in the name of security. Hundreds of foreign nationals remain in prolonged indefinite detention without charge or trial in Guantánamo Bay, in blatant contravention of international and US constitutional standards. Hundreds of people suspected of connections with the *Taliban* or *al Qa’ida* remain in long-term arbitrary detention in Pakistan as well as in US-controlled centres in Afghanistan. China has conveniently justified by the “war on terror” its repression policies in the predominantly Muslim Xinjiang Uighur Autonomous Region to stifle Uighur identity. By the end of 2004, 11 men remained in high-security detention in the United Kingdom under the Anti-Terrorism, Crime and Security Act 2001. In Morocco, Saudi Arabia, Tunisia, Yemen and other countries, scores of people have been arrested and arbitrarily detained in connection with suspected “terrorist” acts or links to opposition armed groups. In Kenya, counter-terrorism measures have resulted in detention without trial and unfair trials.

AI welcomes developments at the UN related to the issue of human rights and counter-terrorism, including the appointment of a human rights expert in the Security Council’s Counter-Terrorism Committee (CTC), as well as the appointment by the Commission, for one year, of an independent expert mandated to report to its 61st session on ways and means to strengthen the promotion and protection of human rights while countering terrorism.⁶ AI agrees fully with the analysis made by the UN High Commissioner for Human Rights that there are “significant gaps in the consideration of national counter-terrorism measures by the UN human rights system” which has been “unable to address the compatibility of national counter-terrorism measures with international human rights obligations in a comprehensive and integrated way”,⁷ and reiterates its call on the Commission to establish a new mechanism on counter-terrorism and human rights.

Violence against women

Amnesty International’s *Campaign to Stop Violence Against Women* highlights the continuum of violence against women, in times of peace and times of war, at the hands of the state, the community and the family.

⁵ AI notes that to date there is no agreed legal definition of the term “terrorism”.

⁶ Commission resolution 2004/87, paragraph 10.

⁷ *Study of the United Nations High Commissioner for Human Rights, Protection of human rights and fundamental freedoms while countering terrorism (A/59/428)*, 8 October 2004.

Women continue to face discrimination and violence at the hands of the state, the community and the family. Rape and sexual abuse by relatives, other men, security officials or armed combatants are inflicted on millions of women and girls every year. Violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture.

This year marks the tenth anniversary of the Beijing Declaration and Platform for Action adopted at the Fourth UN World Conference on Women. AI takes this opportunity to review developments within some of the 12 Critical Areas of Concern in the Platform for Action, including violence against women, women and armed conflict, women and health, and women's human.

Violence against women, including rape and other forms of sexual violence, increases in armed conflict. Rape is used as a weapon of war to conquer, expel or control women and their communities in times of war or internal conflict. A form of gender-based torture, rape is used to extract information, to punish, intimidate and humiliate women, and to strip them of their dignity. Rape is also sometimes used as a form of collective violence to drive people from their land.

Violence against women is a major barrier preventing women from enjoying their right to health, including sexual and reproductive rights, which are already recognized in international human rights standards and rest on the recognition of the right of all women to have control over and decide freely and responsibly on matters related to their sexuality.⁸ Rape and other sexual violence against women can have devastating consequences for women's health. As noted by the Special Rapporteur on the right of everyone to the highest attainable standard of health, "Rape and other forms of sexual violence, including forced pregnancy, non-consensual contraceptive methods (e.g. forced sterilization and forced abortion), forced marriage, all represent serious breaches of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health."⁹

Lack of access to adequate sexual and reproductive health care services can compound the impact of violence against women. Women who become pregnant after being raped sometimes lose their lives as a result of complications at birth, although these complications could be easily treated if appropriate care was available.

In accordance with their Beijing commitments to promote and protect women's human rights, many states have ratified the Convention on the Elimination of All Forms of Discrimination against Women, bringing the total number of states parties to 179. Twelve states have yet to do so: Brunei Darussalam, Cook Islands, Marshall Islands, Nauru, Niue, Oman, Palau, Qatar, Somalia, Sudan, Tonga and the US (which has signed but not ratified). Sixty-two states have ratified the Optional Protocol to the Convention, which entered into force in 2000 and offers a direct means for women to seek remedy and reparations at the international level for violations of their rights.

⁸ Beijing Platform for Action paragraph 96.

⁹ Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health (E/CN.4/2004/49), 16 February 2004, paragraphs 24 and 25.

Human rights of refugees, asylum-seekers, internally displaced people, migrants and non-nationals

Refugees, asylum-seekers, migrants and non-nationals who have left their place of origin, continue to suffer human rights violations at different stages of their displacement. Refugees and IDPs are often housed in camp situations in the immediate aftermath of mass exoduses. Refugees and IDPs are in many cases unable to enjoy many of their human rights, including their economic, social and cultural rights, and many live without access to a durable solution, or have “solutions” imposed on them. In many such situations displaced persons are denied access to the right to employment, to adequate housing, or even in some cases to adequate food and clean water. Women, girls, the elderly and the ill are often discriminated against in the provision of basic services, and sexual and gender-based violence can be rife in such camps and settlements. In some camps and settlements, many displaced children are unable to receive an education, particularly a secondary or vocational education. Amnesty International is calling on the 61st session of the Commission to make the protection of the human rights of refugees, asylum seekers, migrants and non-nationals a reality, by recommending specific action in the context of various country resolutions.

Business and human rights: Giving effect to the UN Norms

Economic globalization has expanded the reach of corporate power. Economically powerful actors are in a position to dramatically influence the society around them – whether for good or ill – and thereby affect the human rights of millions of people. Some companies abuse human rights through their employment practices or the effect of their production processes on workers, communities and the environment. Others are implicated in abuses through their association with repressive governments or political authorities and the activities of their security forces.

Several high-profile crises and cases have prompted many leading companies to address human rights within their own operations and within their sphere of influence.¹⁰ However, existing codes and guidelines carry no legal authority, have no accountability mechanisms, and in most cases lack mechanisms for verification or enforcement. To date, such voluntary initiatives have not been sufficient to prevent human rights abuses caused by company activities or to ensure corporate accountability for respect for human rights.

Recent research by Amnesty International (AI) shows that abuses continue to take place in some countries, year after year, sometimes involving the same companies, as witnessed in Bhopal, India,¹¹ the Niger Delta¹² and Sudan.¹³ For instance, twenty years after the 1984 chemical disaster in

¹⁰ Such crises in the last decade include the Niger Delta involving local communities and oil companies, which include joint ventures entered into by international oil companies with the Nigerian state oil company; the conflicts in Aceh and Colombia, where transnational oil corporations are active; the crisis in the former Irian Jaya, and now West Papua; the two-decade-old war in Sudan; the controversial role of trade in rough diamonds which facilitated transfer of resources to armed opposition groups in Angola, DRC and Sierra Leone; the international consortium building a pipeline through Turkey, Azerbaijan and Georgia; and the role of oil companies in Myanmar.

¹¹ See *Clouds of Injustice: Bhopal Disaster 20 Years On*, Amnesty International (ASA 20/015/2004), November 2004.

¹² See *Nigeria: Are Human Rights In The Pipeline?* Amnesty International (AFR 44/020/2004), November 2004.

Bhopal, more than 100,000 people continue to suffer chronic and debilitating illnesses for which treatment is largely ineffective.

The need for global standards

At its 60th session, the Commission asked the Office of the High Commissioner for Human Rights (OHCHR) to prepare a report for its 61st session setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights.¹⁴ AI believes that the *UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*¹⁵ form the best basis from which to develop a set of global standards for the human rights responsibilities of transnational corporations and other business enterprises.

Protection of human rights in individual countries

The Commission last year voted to take “no action” with regard to the situation of human rights in Belarus, China and Zimbabwe. A draft resolution on the human rights situation in Chechnya was forcefully crushed, and the mandate of the Special Rapporteur on Iraq was ended. AI is deeply concerned by the Commission’s misuse of “no action” motions to end discussions on the human rights situation in particular countries, which prevents the Commission from performing its core function, the promotion and protection of human rights.

Each year, a number of countries with a poor human rights record escape serious scrutiny by the Commission. Some of these “forgotten” situations include:

- **Zimbabwe:** The government continues to repress political opposition and silent dissent. A range of human rights violations, including torture, assault and arbitrary detention, have been committed by members of the police or army, supporters of the ruling Zimbabwe African National Union - Patriotic Front and youth militia. People have been arrested for holding meetings or participating in peaceful protests; legislation has been enacted which bans foreign human rights groups from operating in Zimbabwe and imposes severe restrictions on local human rights organizations. Despite this, the Commission has since 2002 decided to take “no-action”.
- **United States of America:** Hundreds of detainees continue to be held without charge or trial in Guantánamo Bay, while thousands of people have been detained in the course of US military and security operations in Iraq and Afghanistan. Allegations of torture, ill-treatment and death in US custody in Iraq, Afghanistan, and Guantánamo Bay have been investigated and it emerged that the US administration sanctioned interrogation techniques that violated the UN Convention

¹³ See Sudan: *Arming the Perpetrators of Grave Abuses in Darfur*. Amnesty International (AFR 54/139/2004), November 2004, and Sudan: *the Human Price of Oil* (AFR 4/01/2000), May 2000.

¹⁴ Commission decision 2004/116 of 20 April 2004.

¹⁵ These norms were approved by the Sub-Commission on the Promotion and Protection of Human Rights at its 55th session in 2003 and transmitted to the Commission. At its 60th session, the Commission, through Decision 2004/116, confirmed the importance and priority of the question of the responsibility of transnational corporations and related business enterprises with regard to human rights and requested the OHCHR to report to the 61st session on the scope and legal status of existing initiatives and standards.

against Torture. Yet a draft resolution on arbitrary detention in Guantánamo Bay was withdrawn from consideration last year.

- **Indonesia:** The security forces have committed extra-judicial executions, arbitrary detention, torture, sexual violence and destruction of property, in the context of the repression of pro-independence movements in the provinces of Nanggroe Aceh Darussalam (NAD) and Papua. Armed pro-independence groups in these provinces are also responsible for human rights abuses. Elsewhere, police continue to use excessive, and sometimes lethal, force in their operations. People are imprisoned for the peaceful exercise of their right to freedom of expression. Human rights violations are not investigated and prosecuted. A moratorium on death penalty ended in 2004 with the execution of three people. The Commission has never addressed the human rights situation in Indonesia except in the context of the situation in Timor-Leste.
- **Chechnya:** Serious human rights abuses, including torture, rape and ill-treatment, in detention facilities continue in Chechnya. Chechen women are being targeted as alleged potential suicide bombers. Human rights defenders have been harassed and several were killed or “disappeared”. Several thousand internally-displaced people still remain in Ingushetia, where they are under strong pressure from the authorities to return to Chechnya without sufficient guarantees of safety. The Commission has failed to adopt a resolution on the human rights situation in Chechnya for the last three years.
- **Iraq:** US-led forces in Iraq have committed gross human rights violations, including unlawful killings, torture and ill-treatment, and arbitrary detention without charge or trial. Thousands of Iraqi civilians were killed during the armed clashes. Armed groups were also responsible for grave human rights abuses, including targeting civilians, hostage-taking and killing hostages. The death penalty was reinstated in August by the new interim government. For the first time since 1991, the Commission did not adopt a resolution on the human rights situation in Iraq at last year’s session.

Colombia

Colombia’s internal armed conflict continues to lead to the systematic violation of human rights and international humanitarian law by the warring parties – the security forces and army-backed paramilitaries on the one side and armed opposition groups on the other. “Disappearances” and torture have increased in Colombia. Internally-displaced persons, peasant farmers, and Afro-descendent and indigenous communities living in conflict zones continue to be disproportionately affected by the violence.

Human rights activists are victims of serious human rights violations and abuses, including extrajudicial executions. Human rights defenders, community leaders and trade unionists have been subjected to arbitrary detention by the security forces. Some of those detained have been threatened or killed following their release. Women and girls have been raped, killed, “disappeared” and mutilated by all parties to the conflict.

Armed opposition groups continue the recruitment of children, hostage-taking, abduction and killing of civilians. They have also continued to target and kill public officials following a “resign or die”

threat issued to mayors, town councillors and judges in 2002. Army-backed paramilitaries continue to be responsible for most non-combat related killings. In the country as a whole, more than 1,800 killings and “disappearances” have been credibly attributed to the paramilitaries, despite their self-declared ceasefire, which came into operation in December 2002.

The human rights violations committed by security forces in collaboration with paramilitaries have not been investigated by the government and rarely convicted. The Colombian government has publicly committed itself to implement the human rights recommendations of the UN High Commissioner for Human Rights, both by signing the London Declaration of July 2003¹⁶ and by agreeing with the Chairperson’s Statement at the 60th session of Commission for Human Rights.¹⁷

Democratic Republic of Congo

Government authorities remain weak or non-existent in many parts of eastern DRC, which is mostly controlled by armed political groups. Uganda and Rwanda continue to support these armed groups, in violation of peace agreements. The arms embargo, imposed by the UN in July 2003 and monitored by United Nations Organization Mission in the Democratic Republic of Congo, *Mission de l’Organisation des Nations Unies en République Démocratique du Congo* (MONUC), has only been partially effective. In July 2004, the UN-appointed Group of Experts¹⁸ reported that direct and indirect assistance, including supply of arms and ammunition, was provided to armed groups operating in eastern DRC by neighbouring countries and from within the DRC in violation of the embargo.

Armed groups and militia continue to perpetrate grave human rights abuses against civilians in the provinces of North Kivu, South Kivu, Maniema, Orientale (notably the Ituri district), Kasai Oriental and Katanga. Insecurity, ethnic tension and grave human rights abuses persist in these areas, including unlawful killings, widespread rape, torture, and the continued recruitment and use of child soldiers.

During the armed conflict in eastern DRC, tens of thousands of women and girls have been systematically raped and sexually assaulted by combatant forces; many of them have been raped more than once or have suffered gang rapes. Most women victims of human rights abuse are denied medical care. The transitional government has so far made little effort to address the suffering of the civilian population which is traumatized and debilitated by years of warfare, or to advance their human rights.

Armed groups continue to recruit and use child soldiers. In some cases former child soldiers, who were being assisted by local NGOs in eastern DRC, were forcibly re-recruited.

¹⁶ On 10 July 2003, the *London Declaration* was signed at a Meeting on International Support for Colombia by representatives of the governments of Argentina, Brazil, Canada, Chile, Colombia, the European Union, Japan, Mexico, Norway, Switzerland and the United States of America and of the European Commission, the UN and agencies, the Andean Development Corporation, Inter-American Development Bank, IMF and World Bank, which met in London to discuss the situation in Colombia. The signatories “noted with satisfaction the Colombian government’s pledge to implement the recommendations of the UN High Commissioner for Human Rights” and “urged the Colombian government to implement these recommendations promptly and to take effective action against impunity and collusion especially with paramilitary groups”.

¹⁷ *Chairperson’s statement on the situation of human rights in Colombia* (E/CN.4/2004/Future.5), 21 April 2004.

¹⁸ Established following Security Council resolution 1533 (S/RES/1533), 12 March 2004.

Israel/Occupied Territories

Killings by the Israeli army of Palestinians, notably children, have increased. In 2004, Israeli soldiers killed some 700 Palestinians, including more than 150 children. Israeli forces also extra-judicially executed dozens of members and leaders of Hamas and other Palestinian groups, frequently killing and injuring bystanders during these assassinations. Attacks by Palestinian armed groups have claimed the lives of some 100 Israelis, most of them civilians and including eight children.

Though destruction of Palestinian homes, land and property in the Occupied Territories by Israeli forces is routine, 2004 witnessed the biggest wave of house demolition in the Gaza Strip in recent years. Israel, as the occupying power, continues to ignore its responsibilities stipulated by the Fourth Geneva Convention relative to the Protection of Civilians in Time of War, and its obligations according to the human rights treaties to which it is a party.

The existence of more than 100 Israeli settlements throughout the Occupied Territories continues to lead to widespread violations of the human rights of the Palestinian population. These settlements take away crucial Palestinian resources, such as land and water, and result in discrimination against Palestinians, who are not permitted to live on or make use of settlement land, and may not even pass through it or nearby.

Restrictions on the movement of Palestinians are often tightened in retaliation for suicide bombings and other attacks by Palestinian armed groups. In the West Bank, Israel continues to construct a 600 km fence/wall, which encircles and cuts off Palestinian towns and villages, and was declared illegal by the International Court of Justice (ICJ) in July.¹⁹ As a result of the fence/wall, farmers are separated from their land, Palestinians are cut off from each others, and their access to work, health, education and other essential services in nearby towns and villages, is severely hindered.

Nepal

There has been a serious deterioration in the human rights situation with an increase in the scale and severity of human rights abuses by both sides. Illegal arrests and detentions, as well as torture of detainees are widespread. In the second half of 2004, reports of extra-judicial killings increased. The CPN (Maoist) have carried out abduction of schoolchildren, teachers and workers for political education sessions, torturing them to comply with their orders. Human rights defenders are also under attack by the CPN (Maoist). Women are suffering from violence, sexual abuse and discrimination.

¹⁹ On 9 July 2004, the ICJ concluded that the construction of the fence/wall by the Israeli army inside the West Bank, including in and around East Jerusalem, violates international human rights and humanitarian law and that "Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in Occupied Palestinian Territories" noting that "... reparation must, as far as possible, wipe out all the consequences of the illegal act...".

Impunity for human rights abuses is a key factor fuelling the human rights crisis. The government and military fail to investigate abuses committed by security forces, who regularly arrest and detain suspects illegally and undermine judicial processes, particularly those relating to habeas corpus. Staff of the National Human Rights Commission (NHRC) has been prevented from accessing these places of detention, in violation of their mandated powers under the Human Rights Commission Act. The NHRC's findings and recommendations are widely ignored by the government.

In July 2004, eight independent experts of the Commission issued a joint statement expressing concern at the human rights situation and calling on the Nepalese government to implement the 26 March Commitment.²⁰ The UN Working Group on enforced and involuntary disappearances (WGEID) visited Nepal in December 2004 and the High Commissioner for Human Rights will visit in January 2005.

However, given the scale of the human rights crisis and level of impunity in Nepal, AI believes more comprehensive and coordinated action by the international community is urgently needed. It is vital that the Commission acknowledges the extent of the human rights abuses in Nepal, calls on both the government and the CPN (Maoist) to end violations and impunity, and puts in place strong international initiatives that can have a positive and immediate impact on the human rights situation in Nepal.

Sudan

A comprehensive peace agreement was signed on 9 January between the government of Sudan and the Sudan People's Liberation Movement (SPLM). A peace based on human rights is the only way to end the conflict in Darfur as well as the conflicts in South and North Sudan, which have ravaged the lives of so many people.

The Humanitarian and Security Agreements, signed on 9 November 2004, have been breached since day one. The *Janjawid* militias, mostly incorporated into the government Popular Defence Forces, still raid villages, killing villagers, burning homes and looting. The rebel movement has also carried out attacks, including on humanitarian convoys, and abducted and killed civilians.

AI considers that rape has been used frequently as a weapon of war to punish and humiliate the people. UN agencies have described gang rape of schoolgirls during an attack on Tawila in February 2004. After each attack and counter-attack, tens of thousands of people living in rural areas, often already displaced, flee the area and swell already overcrowded camps. There are over 2 million people affected or displaced, tens of thousands killed, and a large number of people dying from conflict-related diseases.

Freedom of the press continues to be restricted in Northern Sudan, and human rights defenders with a connection to Darfur are frequently targeted. Torture is frequently reported and at least three detainees died in custody in circumstances which suggested that torture had caused their deaths. In Khartoum, women and men continue to be brought before public order courts and sentenced to flogging

²⁰ The statement was signed by the Special Rapporteurs on torture; violence against women, extrajudicial, summary and arbitrary executions; the independence of judges and lawyers; and promotion and protection of the right to freedom of opinion and expression, together with the Special Representative of the Secretary-General on human rights defenders, the Chair of the Working Group on enforced or involuntary disappearances, and the Chairperson-Rapporteur of the Working Group on arbitrary detention.

for offences such as illegal sexual intercourse, breaching the dress code, selling alcohol or selling tea without a licence.

Turkmenistan

The human rights situation in Turkmenistan remains very bad. Civil and political rights are systematically violated. Perpetrators of torture enjoy impunity, the legal system remains fundamentally flawed and prison conditions are appalling. Ethnic minorities are discriminated against including through dismissal from employment, and child labour continues to be used in the cotton harvest.

No independent political parties exist in Turkmenistan and all media are state-controlled. Increased pressure forced several civil society activists and a Radio Liberty journalist into exile in 2003 and 2004. Conscientious objectors remain in jail and religious minorities, including those registered, continue to face intimidation. After an unfair trial, Mufti Nasrullah ibn Ibadullah was sentenced to 22 years of imprisonment on charges of treason and involvement in the 2002 alleged assassination attempt on President Niyazov. In May 2004, he was reportedly beaten by officers of the Interior Ministry in the maximum-security prison in Turkmenbashi.

International human rights monitors and foreign journalists have in many cases been refused access to Turkmenistan. For example, the OSCE-appointed rapporteur on Turkmenistan, mandated to examine human rights concerns in the context of the investigations into the alleged assassination attempt, was denied a visa in 2003. None of the Special Procedures of the Commission have been able to undertake missions to the country. People imprisoned following unfair trials in connection with the November 2002 alleged assassination attempt continue to be held in detention.

Standard-setting

Among the standard-setting exercises currently underway at the Commission, Amnesty International (AI) follows in particular the open-ended inter-sessional Working Group on the draft Declaration on the Rights of Indigenous Peoples, the work of the inter-sessional Working Group mandated to draft a legally-binding instrument on enforced disappearances, the Working Group considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the work to finalize the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”.

Draft Declaration on the Rights of Indigenous Peoples

Indigenous peoples around the world continue to face widespread discrimination, impoverishment and ill-health. Indigenous peoples are routinely excluded from decisions vital to their well-being and the survival of their unique ways of life. Discriminatory and illegal dispossession of their land and resources

have often severely undermined the health and livelihoods of indigenous peoples and eroded the foundation of their distinctive cultures. The perpetrators of grave human rights violations against indigenous peoples often enjoy impunity, while the harms they inflict go unaddressed for generation upon generation.

The pervasiveness of human rights violations against indigenous peoples highlights one of the critical failings of the International Decade of the World's Indigenous People. A draft Declaration on the Rights of Indigenous Peoples was prepared by a working group of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities²¹ and affirms that "indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such." For most of the last ten years, there has been little progress toward adoption of the Declaration, which has raised concerns about the international community's commitment to the recognition and protection of the human rights of indigenous peoples. However, the last meeting²² of the open-ended inter-sessional Working Group on the draft Declaration on the Rights of Indigenous Peoples²³ was marked by improved dialogue and cooperation between states and indigenous representatives. Given more time and continued constructive discussions consensus can be still reached on a strong and effective Declaration.

Draft legally-binding instrument for the protection of all persons from enforced disappearance

Commission resolution 2001/46 created a Working Group mandated to elaborate a "draft legally-binding normative instrument for the protection of all persons from enforced disappearance". At its third formal session, the Working Group had before it a draft text of the proposed treaty which establishes a new crime and proclaims a distinct right not be subjected to enforced disappearance. Good progress was made at this session, including on the nature and functions of the expert body that will monitor implementation of the instrument, and on the substantive areas dealing with the criminalization and prosecution of enforced disappearances.

An optional protocol to the International Covenant on Economic, Social and Cultural Rights

Despite international recognition of the indivisibility of all human rights, the UN human rights system allows for individual complaints against violations of the International Covenant on Civil and Political Rights (ICCPR), but not violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This striking disparity would be finally addressed by the adoption of an optional protocol to the ICESCR.

²¹ Now the UN Sub-Commission on the Protection and Promotion of Human Rights.

²² Tenth session of the Working Group, 13 to 24 September and 29 November to 3 December, Geneva.

²³ The Working Group was established in accordance with Commission resolution 1995/32 to consider the text submitted by the Sub-Commission and to elaborate a draft declaration for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People (1995-2004).

At the second meeting of the Working Group to consider “options regarding the elaboration of an optional protocol to the ICESCR” established by Commission resolution 2002/24 , AI was pleased to note that the large majority of states present expressed their support for an optional protocol which would establish an individual communications procedure. The Working Group will present a report to the Commission at its 61st session which calls on the Chairperson-Rapporteur to submit to the Working Group a paper on “elements for an optional protocol in order to facilitate a more focussed discussion at the third session of the working group”. AI is committed to working for the recognition of economic, social and cultural rights as enforceable human rights and believes that the adoption of an optional protocol is an essential step to allow victims of violations of economic, social and cultural rights a remedy at the international level.

Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law

In 1996, revised draft basic principles and guidelines, prepared by Mr. van Boven, were submitted to the Commission. In 1998, the Commission appointed Mr. Cherif Bassiouni as independent expert to prepare a revised version of the draft basic principles and guidelines,²⁴ which were submitted to it in 2000.

Since then, a number of consultative meetings have been held on the draft basic principles and guidelines. Amnesty International welcomes the emergence of this consensus text, after a process lasting more than 15 years, and considers the draft basic principles and guidelines an important tool to advance international standards on the right to reparations for violations of human rights and international humanitarian law.

²⁴ Commission resolution 1998/43.

Annex

Below are listed recommendations by Amnesty International for language to be maintained and/or included in resolutions, decisions and chairperson's statements which the 61st session of the UN Commission on Human Rights is expected to adopt. For more information please refer to the full document, *2005 UN Commission on Human Rights: The UN's chief guardian of human rights?* (AI Index IOR 41/001/2005).

Absolute prohibition of torture

Amnesty International calls on the Commission on Human Rights to adopt a comprehensive and progressive resolution on the prohibition of torture and ill-treatment, which:

- reaffirms unequivocally the absolute prohibition of torture and ill-treatment;
- reminds states that statements and any other evidence which has been obtained as a result of torture or ill-treatment shall not be invoked in any proceedings, except against a person accused of torture or ill-treatment;
- reaffirms that states shall not expel, return or extradite a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture or ill-treatment.

Moreover, AI calls on all member states to use the occasion of the 61st session of the Commission to condemn torture and ill-treatment unreservedly, to pledge to implement the 12-Point Programme for the prevention of torture, and to take the following steps:

- ratify the Convention against Torture without reservations, and make the declarations under Articles 21 and 22;
- withdraw any reservations to the Convention against Torture (including declarations made under Article 28);
- implement fully the Convention against Torture and comply with the reporting obligations contained therein;
- implement the concluding observations and views of the Committee against Torture;
- ratify the Optional Protocol to the Convention against Torture;
- cooperate fully with the Special Rapporteur on torture, including by facilitating the Special Rapporteur's requests to visit, responding in full to urgent and routine correspondence, implementing country-specific and general recommendations and providing information about follow-up.

Abolition of the death penalty

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the question of the death penalty which reiterates all of the important provisions of the Commission's previous resolutions on the subject and also:

- affirms that the death penalty *violates human rights*, particularly the right to life and the right not to be subjected to torture or cruel, inhuman or degrading punishment as enshrined in the Universal Declaration of Human Rights and other international and regional human rights instruments;²⁵
- recalls the *resolutions of the Economic and Social Council* concerning the 1984 Safeguards guaranteeing protection of the rights of those facing the death penalty, namely ECOSOC resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996;²⁶
- welcomes the adoption by several states of *constitutional provisions* precluding the death penalty;²⁷
- welcomes the efforts of various *sectors of civil society* at national and international levels to achieve the abolition of the death penalty;²⁸
- welcomes the *seventh quinquennial report* of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty and refer to its conclusions;
- requests the Secretary-General to continue to submit a *yearly supplement* to his quinquennial report to the CHR at its next session;
- decides that the Commission will discuss the issue again at its 62nd session in 2006.

<h2>Human rights and counter-terrorism</h2>

Amnesty International calls on the Commission on Human Rights to include in its resolution on the "Protection of human rights and fundamental freedoms while countering terrorism" provisions that:

²⁵ The death penalty is increasingly recognized as a violation of human rights. The Human Rights Committee has stated that "all measures of abolition should be considered as progress in the enjoyment of the right to life" (General Comment 6 on Article 6 of the ICCPR, para. 6). Several national constitutional courts have found that the death penalty violates the right to life and/or the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

²⁶ ECOSOC resolutions 1989/64 and 1996/15 contain important provisions relating to the implementation of the 1984 Safeguards. They recommend, for example, that the death penalty be eliminated for "persons suffering from mental retardation or extremely limited mental competence" and call for the observance of relevant UN standards and norms in death penalty cases.

²⁷ Over 30 countries have prohibited the death penalty in their constitutions, often on human rights grounds. By enshrining abolition in its constitution, a country shows the importance it attaches to the decision it has taken to abolish the death penalty. Supplementing the removal of the death penalty from the penal law, the enactment of a constitutional prohibition is a way of "solidifying" abolition by providing an additional legal basis which can serve as an impediment to any hasty attempt to reinstitute the punishment.

²⁸ One recent example of such an effort is the convening of the Second World Congress against the Death Penalty in Montreal in October 2004. Another is the holding of the annual World Day against the Death Penalty on 10 October by the World Coalition against the Death Penalty.

- urges states to ensure that in taking measures to counter terrorism, they make sure that these are fully consistent with their obligation, under international law, to respect human rights, including the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment;
- continue and upgrade the mandate on counter-terrorism, established by the Commission in 2004, to a Special Rapporteur mandated to monitor and analyze the impact on human rights of measures taken by states to combat terrorism;
- call for sufficient resources and support to enable the new mandate to carry out its functions effectively, including the means to liaise effectively with the Counter-Terrorism Committee and its Executive Directorate in New York;
- endorse the request by the Special Procedures, on 25 June 2004, to visit detainees in Guantánamo, Afghanistan and Iraq, and urge the states concerned to cooperate fully and effectively to enable the Special Procedures to visit as soon as possible;
- ensure the protection of the human rights of refugees, asylum seekers and migrants within the context of any "counter-terrorism" operations by states, including full respect of the principle of non-refoulement;
- include a reference to General Comment 29 of the Human Rights Committee²⁹ in the operative parts of the resolution, with an emphasis on the importance of remedies for violations of ICCPR provisions;
- strengthen the language regarding the "*Digest of Jurisprudence of the UN and regional organisations on the protection of human rights while countering terrorism*" prepared by Office of the High Commissioner for Human Rights and ask states to distribute it to all relevant judicial and law enforcement authorities.

Violence against women

Amnesty International calls on the Commission on Human Rights to adopt an effective resolution on the elimination of violence against women, which reaffirms and strengthens the commitments made in Beijing, and which:

- Calls on states take concrete steps, including through the implementation of national action plans, accompanied by gender-specific budgets, to end discrimination and violence against women, including rape and other forms of sexual violence,
- Urges states to undertake prompt and impartial investigations into all allegations of violence against women, including rape and other forms of sexual violence, and to bring to justice those responsible in accordance with international standards for fair trial;
- Urges governments to exercise fully and without delay their duty of due diligence to prevent, investigate and punish all acts of violence against women, including by enacting, reinforcing or amending national legislation to end discrimination against women and protect their human rights in accordance with relevant international standards;

²⁹ General Comment 29 on states of emergency (article 4) of the Human Rights Committee (CCPR/C/21/Rev.1/Add.11), 31 August 2001.

- Urges all parties to conflict to take concrete steps to protect the human rights of women in accordance with international human rights and humanitarian law and through full implementation of Security Council resolution 1325 on women, peace and security;
- Ensures access for survivors of rape and other forms of violence against women to comprehensive and confidential sexual and reproductive health services;
- Ensures that refugee, IDP and asylum-seeking women and girls, in particular those residing in camp situations, are protected against sexual and gender-based violence;
- Promote and protect the sexual and reproductive rights of all women, including their right to have control over and decide freely and responsibly on matters related to their sexuality free of discrimination, coercion and violence;
- Urges all states that have yet to do so to ratify and implement the UN Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Rome Statute for the International Criminal Court, and relevant regional standards;
- Urges all states parties to the UN Convention on the Elimination of All Forms of Discrimination against Women to withdraw reservations that are incompatible with the object and purpose of the Convention;
- Calls on all states to support the work of the Special Rapporteur on violence against women, including her proposal to develop indicators to assess violence against women and state accountability for its eradication;
- Encourages all the Special Procedures of the Commission to pay particular attention to gender-based violations of human rights within their respective mandates and to reflect these in their reports and recommendations;
- Encourages all states, UN bodies and NGOs to contribute to the study of the Secretary-General on violence against women, requested by the 58th session of the General Assembly.

<p style="text-align: center;">Human rights of refugees, asylum-seekers, internally displaced people, migrants and non-nationals</p>

Amnesty International calls on the Commission on Human Rights to:

- work towards ensuring effective respect and protection of the human rights of refugees, asylum seekers, migrants, non-nationals, and internally displaced persons;
- ensure that the human rights of refugees, asylum seekers, migrants and non-nationals, and internally displaced persons are reflected in all relevant resolutions of the Commission;
- include in its annual resolution on arbitrary detention language that:
 - encourages States to, in particular, avoid the arbitrary and/or indefinite detention of refugees and asylum seekers and to seek to ensure that any detention of these persons is in full conformity with international legal standards and principles;
 - encourages States to ensure that any detention of refugees and asylum seekers is subject to periodic judicial review that considers the necessity for the continuation of detention and provides an effective opportunity for the refugee or asylum seeker or his or her representative to rebut any findings made.

- ensure that the analytical report and thematic annex on measures taken to implement resolution 2003/52 and obstacles to its implementation are taken into consideration in the Commission's deliberations and that effective follow-up action is instituted.

Business and human rights: Giving effect to the UN Norms

Amnesty International calls on the Commission on Human Rights to adopt a resolution on business and human rights that:

- ensures that the issue of corporate responsibility for human rights remains on the Commission's agenda and builds on the UN Norms and the work of the Sub-Commission on the Promotion and Protection of Human Rights,
- ensures the continuation of the consultation process initiated by the Commission in 2004. The process should be led by the HCHR and should build on the UN Norms.
- ensures that this consultation process is open to all stakeholders, including trade unions, business, governments, UN agencies and civil society, including victims or representatives of victims of human rights abuses allegedly committed by companies;
- calls for the appointment of a special adviser to the Secretary-General on business and human rights, on the recommendation of the High Commissioner for Human Rights, to examine key issues such as "sphere of influence" and "complicity", to provide advice to the consultation process and to look into and propose options for the strengthening of standards.
- Decides to review annually, starting in 2006, the progress made in strengthening standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights and possible means of implementation.

Protection of human rights in individual countries

Too often the Commission on Human Rights (the Commission) is silent about certain situations involving gross and systematic violations of human rights. Each time the members of the Commission fail to allow the Commission to act in accordance with its mandate to promote and protect human rights – wherever violations occur and whoever the perpetrator – they erode further its relevance and credibility. It is time for more members of the Commission to demonstrate more commitment to promoting respect for human rights globally. They must do this by addressing human rights violations wherever they occur and whoever the perpetrator.

The Commission also all too often disregards the findings of its own human rights mechanisms, including country and thematic experts, and fails to support their recommendations for addressing patterns of human rights violations. The same is true of recommendations from the

treaty monitoring bodies, which also provide critical analysis and conclusions that ought to inform the decisions of the Commission. The result is that perpetrators of human rights violations are allowed to operate with impunity. Amnesty International (AI) urges all governments to:

- Establish objective and transparent mechanisms for scrutiny of the human rights situation in individual countries, taking into account the recommendations by the Special Procedures and the treaty monitoring bodies;
- Create an effective system of monitoring and evaluating implementation by governments of recommendations by the Commission, as well as by the Special Procedures, in order to achieve increased accountability by states;
- Support the work of the Special Procedures by fully and promptly responding to their communications, implementing their recommendations, extending a standing invitation to them to visit, and facilitate any visits requested without delay; and
- Renew the thematic and geographical Special Procedure mandates that are up for renewal and call on states to nominate qualified candidates, including women.

On the occasion of the 61st session of the Commission, AI makes a number of detailed recommendations for action by the Commission in relation to six countries on its agenda: Colombia, Democratic Republic of the Congo, Israel and the Occupied Territories, Nepal, Sudan and Turkmenistan. AI's concern about the human rights situation in individual countries, however, extends far beyond these six countries as the organization's annual report and other publications amply demonstrate.

<h2>Colombia</h2>

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Colombia that:

- acknowledges that, although some indicators of political violence have fallen, the human rights situation in Colombia continues to be very serious;
- condemns serious and widespread abuses of international human rights and humanitarian law by all parties to the conflict, including the armed forces, paramilitary groups and armed opposition groups, and calls for all perpetrators to be held to account;
- expresses concern about government policies that may lead to impunity for human rights abuses, including those on demobilizing illegal armed groups without respecting the right of victims to truth, justice and reparation and those leading to the increased use of military courts to hear cases of human rights violations;
- calls on the government to ensure the full and early implementation of the recommendations contained in the report of the High Commissioner for Human Rights, in accordance with its commitments in the July 2003 *London Declaration*, and through a time-bound calendar and plan of action;

- calls for guarantees for the safety of human rights defenders and other activists, as well as their right to carry out their human rights work freely and without harassment;
- calls for tangible measures to end violence against women, including by guaranteeing access by survivors of sexual violence to the justice system and to health services, and by demobilized women and girls to gender-sensitive demobilization programmes;
- calls for an end to attacks on civilian communities and their increased protection by both the government and armed opposition groups, in accordance with international humanitarian law;
- calls on the government to implement in full the *UN Guiding Principles on Internal Displacement*, including prevention of forced displacement, protection of the internally displaced, access to humanitarian aid, and the right to return, resettlement or reintegration in conditions of safety and dignity;
- calls for continued financial support for the office of the High Commissioner for Human Rights in Bogotá and support for its continued mandate;
- decides to forward the report of the High Commissioner for Human Rights on the human rights situation in Colombia to the 60th session of the General Assembly;
- calls on the government to cooperate with the Special Procedures of the Commission by responding promptly and fully to their communications, and to facilitate their visits, including the visit by the Working Group on enforced or involuntary disappearances, so that it can report to the 62nd session of the Commission;
- calls on the government to cooperate with the treaty monitoring bodies, including by implementing the concluding observations from the Human Rights Committee's from March 2004 and its views in relation to cases submitted under the first Optional Protocol, and the concluding observations of the Committee against Torture from November 2003, to report back to those committees on the implementation of the recommendations; and to submit its overdue reports, particularly those in relation to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women;
- calls on the government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention against Torture.

Democratic Republic of Congo

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in the DRC that:

- calls on all governmental and non-governmental armed forces and security services to uphold international human rights and humanitarian law to protect civilians;
- urges all leaders of armed forces to instruct their combatants to end all human rights abuses, including sexual violence, and the recruitment and use of child soldiers;
- calls on the government to investigate all allegations of human rights abuses and to bring to justice those responsible according to international standards for fair trial and without recourse to the death penalty;
- supports measures to protect civilians, including the reinforcement and deployment of MONUC throughout the conflict zones and the implementation of DDR (disarmament, demobilization, reintegration) programmes;
- urges all governments to respect the arms embargo on DRC and to improve its enforcement;
- calls on the government to enact effective implementing legislation for the Rome Statute;
- calls for measures to strengthen reconstruction and reform of the criminal justice system as well as the national healthcare system;
- calls on the government to take appropriate measures against "hate speech", as required by the Convention on the Elimination of Racial Discrimination, in advance of the national elections in June 2005;
- calls on all governments in the region to extend adequate human rights protection and humanitarian assistance to internally displaced persons (IDPs) and refugees forced to flee because of continued human rights violations;
- renews the mandate of the Independent Expert on the DRC for three years to enable him to develop a sustainable programme of technical assistance;
- calls on the government to issue a standing invitation to the Special Procedures of the Commission, to cooperate with the Special Procedures by responding promptly and fully to their communications regarding alleged violations, and to facilitate visits to the DRC by the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on violence against women, and the Special Representative of the Secretary-General on human rights defenders;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its long overdue reports, in particular those under the ICCPR and the ICESCR, and to implement the views of the Human Rights Committee in relation to cases considered under the first Optional Protocol.³⁰

³⁰ In particular, *Communication 962/2001: Democratic Republic of Congo* (CCPR/C/81/D/962/2001), 23 July 2004, in which the Committee considered that the DRC had violated its obligations under articles 6 paragraph 1; 7; 9 paragraphs 1, 2 and 4; 10 paragraph 1; and 23 paragraph 1 of the Covenant, and requested the state to report back on implementation of its views in a period of 90 days.

Israel/Occupied Territories

Amnesty International calls on the Commission on Human Rights to include recommendations in the resolution on Israeli settlements that:

- urges the Israeli government to immediately stop building the fence/wall inside the Occupied Territories, to dismantle the sections already built inside the West Bank, and to end the extensive and punitive restrictions on movement imposed on Palestinians living in the Occupied Territories;
- urges the Israeli government to end immediately the construction or expansion of Israeli settlements in the Occupied Territories, including in and around East Jerusalem, and to take concrete measures to evacuate Israeli civilians living there;
- calls on the Israeli government to end immediately the destruction and unlawful seizure of Palestinian homes, land and other property in the Occupied Territories;
- urges the Israeli armed forces and Palestinian armed groups to end immediately the killing of civilians;
- calls on the Israeli government and the Palestinian Authority to take concrete steps to end the impunity enjoyed by those responsible for unlawful killings and other abuses; including by ensuring prompt and impartial investigations into all alleged violations and bringing to justice those responsible in accordance with international standards for fair trial;
- urges the Israeli government to repeal discriminatory legislation barring family reunification for Palestinian spouses of Israeli citizens, as called for by the CERD;
- calls on the Israeli government to cooperate with the Special Procedures of the Commission, by facilitating the visits to Israel and/or the Occupied Territories of the Special Rapporteur on torture, the Special Rapporteur on violence against women and the Special Rapporteur on freedom of religion;
- calls on the Israeli government to cooperate with the treaty monitoring bodies by implementing their concluding observations and decisions, including the recommendations made by the Human Rights Committee in July 2003,³¹ and by submitting the urgent report requested by the CERD in August 2004 as well as its overdue reports to the CERD and to the Committee against Torture.

Nepal

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Nepal that:

³¹ *Concluding Observations of the Human Rights Committee: Israel* (CCPR/CO/78/ISR), 24-25 July 2003.

- condemns the continued grave human rights situation and break-down of the rule of law, and urges both sides to the conflict to uphold international human rights and humanitarian standards and the rule of law;
- urges both sides to the conflict to sign the Human Rights Accord and ensure its early and full implementation;
- calls on the government to end impunity for human rights violations, including through prompt and impartial investigations into all allegations of human rights violations and to ensure that those responsible are brought to justice in accordance with international standards for fair trial;
- urges the government to ensure that national legislation, in particular regarding national security, conforms with international standards to which Nepal has adhered;
- urges the government and the CPN (Maoist) to take all necessary steps to ensure the respect of the human rights of women and girls, including their protection from violence in the context of the conflict;
- urges the government to enforce a complete prohibition on *incommunicado* detention in military barracks, as recommended by the WGEID;³²
- establishes a mandate for a Special Rapporteur on the situation of human rights in Nepal;
- supports an effective human rights presence by the OHCHR with a clear mandate to monitor the human rights situation throughout the country and to report publicly on its findings;
- calls on the government to support the NHRC in carrying out its mandate, by ensuring its continued independence and the full cooperation of all organs of the state with its investigations;
- calls on the government and the CPN (Maoist) to take all necessary measures to end the harassment of human rights defenders;
- calls on the government to ensure the promotion and protection of the human rights of internally displaced persons (IDPs), including through implementing in full the *UN Guiding Principles on Internal Displacement*, ensuring their access to humanitarian assistance, and the right to return, resettlement or reintegration in conditions of safety and dignity, and ensuring effective attention to the particular needs of vulnerable groups;
- expresses regret that the government did not give effect to the standing invitation extended to the Commission's Special Procedures in the Chairperson's statement adopted at the 60th session of the Commission;
- calls on the government to cooperate with the Special Procedures of the Commission, including by responding promptly and fully to their communications and facilitating their visits;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports, particularly under the ICCPR, and to implement

³² Press release by the Working Group on Enforced and Involuntary Disappearances of the United Nations Commission on Human Rights following its visit to the Kingdom of Nepal, Kathmandu, 14 December 2004.

the concluding observations of the CEDAW from January 2004 and of the CERD from March 2004.³³

Sudan

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Sudan that:

- addresses impunity by supporting recommendations for accountability mechanisms to be established throughout the country to investigate abuses of human rights and humanitarian law, including past abuses, and calling on the government to implement reform of the legal system to ensure justice for all;
- urges guarantees for the safety of civilians by ensuring the safe, dignified and voluntary return, resettlement or reintegration of IDPs and monitoring of the human rights situation of returnees;³⁴ and by supporting the African Union peace-keeping forces in Darfur to carry out their mandate to monitor and verify the disarmament of the militias;³⁵
- calls on all armed political groups in Sudan to issue clear instructions to all combatants under their control to respect human rights and international humanitarian law;
- calls on the government to ensure free access throughout the country for international and national human rights and humanitarian organizations;³⁶
- urges respect for the human rights of women and girls, including their protection from violence;
- urges guarantees for respect for the right to freedom of expression; such guarantees should be integral to the peace agreement to enable genuine monitoring and reporting;
- urges UN member states to respect the UN arms embargo on non-governmental entities in Darfur, to immediately suspend transfers of all arms and related logistical and security supplies to Sudan which are used by the armed forces or militias for grave human rights abuses, and to adopt mechanisms to monitor the suspension of arms transfers
- recommends the strengthening of the UN human rights monitoring presence throughout the country,³⁷ including by ensuring public and transparent reporting and adequate funding;

³³ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Nepal* (CERD/C/64/CO/5), 12 March 2004.

³⁴ The right of refugees and displaced persons to return to their homes voluntarily in conditions of security and dignity has been affirmed in the reports of the Representative of the Secretary-General on internally displaced persons, paragraphs 41-42, and of the High Commissioner for Human Rights, paragraph 100, as well as in Security Council resolution 1564.

³⁵ See *Report of the Representative of the Secretary-General on internally displaced persons, Mission to the Sudan – The Darfur crisis* (E/CN.4/2005/8), 27 September 2004, paragraph 46, in which the Representative argues that the role of the African Union Cease Fire Commission should be developed and supported.

³⁶ See *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004, paragraph 98; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to the Sudan* (E/CN.4/2005/7/Add.2), 6 August 2004, paragraph 59; and *Report of the Representative of the Secretary-General on internally displaced persons, Mission to the Sudan – The Darfur crisis* (E/CN.4/2005/8), 27 September 2004, paragraph 42.

- replaces the Independent Expert mandate with a Special Rapporteur mandate with a clear monitoring component;
- calls on the government to cooperate with the Special Procedures of the Commission, including by responding promptly and fully to their communications, facilitating their visits to Sudan and implementing their recommendations;³⁸
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports under the ICCPR and implementing the concluding observations and decisions of the committees, in particular the decision of the CERD of August 2004.³⁹

Turkmenistan

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Turkmenistan that:

- condemns the failure of the government of Turkmenistan to invite and to cooperate with any of the Special Procedures of the Commission;
- establishes a Special Rapporteur on Turkmenistan;
- urges the government to grant immediate access to the country for the Special Procedures, other independent bodies, NGOs, and independent media;
- calls on the government to grant immediate access for independent bodies, including the ICRC, to the prisoners held in connection with the November 2002 alleged assassination attempt;
- urges the government to release immediately and unconditionally all prisoners of conscience, to order the re-trial of those sentenced in unfair trials and to allow all citizens to freely exercise their human rights, including the rights to freedom of expression and religion;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports, particularly under the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women.

Standard-setting

³⁷ See *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004, paragraph 105, in which the High Commissioner advocates a “continuous monitoring of the human rights situation in Darfur”.

³⁸ *Ibid*, paragraph 106, in which the High Commissioner calls the government to “issue an open invitation to all special procedures of the Commission on Human Rights to visit the Sudan at any time” and to “facilitate their visit to Darfur as early as possible”.

³⁹ *Decision 1 (65)* of the Committee on the Elimination of Racial Discrimination (CERD/C/65/Dec.1), 18 August 2004.

Among the standard setting exercises currently underway at the Commission, Amnesty International follows in particular the open-ended inter-sessional Working Group on the draft Declaration on the Rights of Indigenous Peoples, the work of the inter-sessional Working Group mandated to draft a legally binding instruments on enforced disappearances, the Working Group considering options regarding the elaboration of an optional protocol to the ICESCR, and the work to finalize the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”.

Draft Declaration on the Rights of Indigenous Peoples

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the rights of indigenous peoples that:

- urges governments to work cooperatively with indigenous peoples towards the adoption of a strong and effective Declaration on the Rights of Indigenous Peoples;
- continues the standard-setting process in a manner that involves the full participation of indigenous peoples, that builds on the original draft text and the progress made to date within the Working Group, and that sets a realistic process and timetable for the adoption of the Declaration.

Draft legally binding instrument for the protection of all persons from enforced disappearance

Amnesty International calls on the Commission on Human Rights to continue to support the “prompt completion” of the Working Group as agreed at the 60th session in resolution 2004/40.

An optional protocol to the International Covenant on Economic, Social and Cultural Rights

Amnesty International calls on the Commission on Human Rights to include in its resolution on the “Question on the realisation in all countries of the economic social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these rights” language that:

- welcomes the report of the open-ended Working Group, including the request that its Chairperson-Rapporteur submit a paper on “elements for an optional protocol” to the third session of the Working Group;
- ensures that the process to explore options for an optional protocol to the International Covenant on Economic, Social and Cultural Rights continues as mandated by the 60th session of the Commission.⁴⁰

Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law

Amnesty International calls on the Commission on Human Rights to adopt the Basic Principles and Guidelines as finalized by the consultative meeting and to resist any further weakening of the text.

⁴⁰ Commission resolution 2004/29.